

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

COLORBÖK, INC.,

Plaintiff/Counter-Defendant,

CIVIL ACTION NO. 07-cv-11538

vs.

DISTRICT JUDGE JULIAN ABELE COOK

**CREATIVE INTERNATIONAL,
L.L.C.,**

MAGISTRATE JUDGE MONA K. MAJZOUB

**Defendant/Counter
and Third-Party Plaintiff.**

vs.

FIFTH THIRD BANK,

Third-Party Defendant.

**OPINION AND ORDER GRANTING COLORBÖK, INC. AND FIFTH THIRD BANK'S
MOTION TO COMPEL DISCOVERY (DOCKET NO. 34)**

This matter comes before the Court on Colorbök, Inc. and Fifth Third Bank's Motion to Compel Discovery filed on June 11, 2008. (Docket no. 34). Defendant Creative International, L.L.C. ("Creative"), did not file a Response to the Motion, as required to oppose a motion. E.D. Mich. LR 7.1(b). The parties filed a Joint Statement of Resolved and Unresolved Issues Related to Colorbök, Inc. and Fifth Third Bank's Motion to Compel Discovery on July 28, 2008. (Docket no. 38). The matter has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 35). Counsel for Colorbök, Inc. and Fifth Third Bank appeared before the Court for oral argument on August 4, 2007¹. The matter is now ready for ruling.

¹Defendant Creative did not appear. Defendant Creative's counsel was contacted by the Court via telephone and counsel initially stated that he thought the issues had been resolved. He further stated that because he had not filed a Response to Movants' Motion, he did not expect to

Plaintiff/Counter-Defendant Colorbök, Inc. and Third-Party Defendant Fifth Third Bank (together, "Movants") served their respective First Sets of Discovery Requests on Creative on March 20, 2008. (Docket no. 34-3, 34-4). Creative's responses, answers and objections were due by April 21, 2008. Fed. R. Civ. P. 33 and 34. At Creative's request, Movants gave Creative a one-week extension to respond. During this time the parties engaged in settlement discussions. When the settlement efforts failed, Movants agreed to extend the deadline to respond to the discovery requests to June 2, 2008. (Docket no. 34). Correspondence between the parties' counsel ensued and by June 9, 2008 Creative had not served responses to discovery. (Docket nos. 34-7, 34-8). Movants filed this motion on June 11, 2008. (Docket no. 34).

In their Joint Statement, the parties agree that all issues have been resolved except a list of documents and information which Creative has not yet provided to Movants. (Docket no. 38). In the Joint Statement, the parties "agree that, with the exception of privileged attorney-client communications, attorney work product, or other privileged documents, the unresolved categories listed in this Statement are properly discoverable under the Federal Rules of Civil Procedure," and "further agree that the Movants properly requested these items in the Motion, Colorbök, Inc.'s First Set of Interrogatories, Document Requests and Request to Permit Entry to Inspect Documents to Creative International, LLC, and Fifth Third Bank's First Set of Interrogatories and Document Requests to Creative International, LLC." (Docket 38). Creative did not object or provide any other basis for failing to comply with the Federal Rules of Civil Procedure and participate in discovery.

Movants' counsel testified that the parties have been operating under the discovery plan and deadlines set forth in the Report of Parties' Rule 26(f) Conference dated March 20, 2008. (Docket

argue at the hearing.

no. 33). The discovery deadline in the Report is August 22, 2008. (Docket no. 33). The Court will grant Movants' Motion to Compel as to the remaining issues listed in the Parties' Joint Statement. Due to the impending discovery cut-off date, the Court will order Creative to produce complete documents and information responsive to the following on or before August 15, 2008:

1. Documents relating to Creative's acknowledgment of Colorbök's purchase orders.
2. Documents relating to any credit check that Creative performed on Colorbök.
3. Documents relating to Creative's alleged damages, including the revised damage itemization and notes referenced by Mr. Art Desautels during his deposition.
4. List of potential customers who have refused to do business with Creative, which forms the basis of Creative's alleged damages for loss of good will, as explained by Mr. Desautels during his deposition.
5. Documents relating to the letter of credit at issue in this case including documents submitted by Creative in connection with the letter of credit and related correspondence.
6. Last available contact information for former Creative employee Jake Carey, who Mr Desautels testified has knowledge regarding Creative's alleged damage claims.
7. Confirmation that Creative will comply with Colorbök's request to inspect goods that have been rejected in this case. (Docket no. 38).

The Court will order that Creative's confirmation that it will comply with Colorbök's request to inspect goods be accompanied by a mutually convenient date and time on which the goods will be inspected, occurring on or before August 22, 2008. To the extent Creative alleges that any of the requested documents or information are privileged, the Court will order Creative to produce a privilege log in accordance with Fed. R. Civ. P. 26(b)(5).

The Court recognizes that the information to be produced by Creative includes contact information for an individual whom Movants wish to depose. Therefore, the Court will allow an

exception to the current August 22, 2008 discovery deadline to allow sufficient time for Movants to subpoena and/or notice and take the deposition of Jake Carey. The Court will extend the time frame within which Jake Carey may be deposed to September 8, 2008.

IT IS THEREFORE ORDERED that Colorbök, Inc. and Fifth Third Bank's Motion to Compel Discovery (docket no. 34) is **GRANTED** as set out above.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: August 07, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: August 07, 2008

s/ Lisa C. Bartlett
Courtroom Deputy